

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the following remarks. Claims 1-29 are pending in the present application.

*Allowable Subject Matter*

The indication that Claims 7-9, and 19-21 are objected to as being dependent upon a rejected base claim, but are otherwise allowable, is noted with appreciation. However, Applicants believe that the claims upon which these claims depend are also allowable. Therefore, Applicants have elected to await the Examiner's review of the following remarks prior to converting any of Claims 7-9 and 19-21 into independent form.

*Claim Rejection Under 35 U.S.C. §102*

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1-6, 10-18, and 22-29 have been rejected under 35 U.S.C. §102(b) as allegedly being anticipated by the disclosure contained in U.S. Patent No. 6,201,176 to Yourlo. This rejection is respectfully traversed because the claimed invention as set forth in Claims 1, 13, 23, 26, and 29 and the claims that depend therefrom are patentably distinguishable over the disclosure contained in the Yourlo document.

Yourlo pertains to a system and method for querying a music database in response to receipt of a music query or request 104. In setting up the music database, Yourlo discloses that music contained in the database are classified using feature extraction. Column 3, lines 21-23. Yourlo does not, however, appear to disclose how the music is stored in the database in the first place. More particularly, Yourlo does not appear to disclose that the music is recorded as a sample of audio data. In most likelihood, the music is copied or downloaded from sources such as compact discs or other databases. The classification of the music is described as involving “segmenting each piece of music into a plurality of windows, extracting at least one characteristic feature in each of the windows, and indexing each piece of music as a function of the extracting features.” Column 3, lines 23-26. It is important to note that all of the steps identified above relate to storage and indexing of the music stored in the database and not to the return of music in response to a request.

In terms of returning a response to a request, Yourlo describes a system in which the user may retrieve songs already known to the user. In addition, Yourlo describes a system in which a user may retrieve songs that are similar or dissimilar to known songs or songs that

meet certain user specified criteria, e.g., tempo or loudness. Therefore, Yourlo discloses that the music query or request 104 from the user may include “(1) a set of names of known pieces of music and the degree of similarity/dissimilarity specified by a conditional expression...; and (2) a set of user specified features and a similarity/dissimilarity specification in the form of a conditional expression (e.g. something that has a tempo of around 120 beats per minute, and is mostly loud).” Column 10 lines 47-57. In this regard, Yourlo discloses a method in which user specified features are implemented to output music identifiers 108 associated with the desired piece of music 106. In other words, the method disclosed in Yourlo matches user identified features, e.g., the name of the piece of music, along with conditional expressions, with songs that are similar or dissimilar to those identified features. See column 4, lines 26-29.

Yourlo therefore differs substantially from the present invention as set forth in Claims 1, 13, 23, 26, and 29. In one respect, the present invention as set forth in these claims pertains to a method or system for identifying music based upon a sample of audio data. In other words, and as discussed in greater detail in the specification, a user who hears a song that does not know, for instance, the title, may record a sample of the song and the desired information may be found based on the recorded sample of the song. More particularly, Yourlo clearly fails to disclose the steps of recording a sample of audio data, deriving a sample time signal from the audio data, sorting a plurality of songs, wherein each song is represented by a time signal, and matching the sample time signal with the time signal of the song in the plurality of songs as set forth in Claim 1 of the present invention.

With respect to Claim 13 of the present invention, Yourlo fails to disclose a means for recording a sample of audio data, a means for deriving a sample time signal from the audio

data, a means for sorting a plurality of songs, wherein each song is represented by a time signal, and a means for matching the sample time signal with the time signal of a song in the plurality of songs. More particularly, for instance, Yourlo fails to mention any means for recording a sample of audio data nor any means for deriving a sample time signal from the audio data.

Yourlo also fails to disclose a method for identifying music including the steps of recording a sample of audio data, deriving a sample time signal from the audio data, and matching the sample time signal with a time signal of a plurality of time signals and a database, wherein each of the plurality of time signals represents a song in the database as set forth in Claim 23 of the present invention.

With respect to Claim 27 of the present invention, Yourlo fails to disclose a system for identifying music having a means for recording a sample of audio data, a means for deriving a sample time signal from the audio data, and a means for matching the sample time signal with the time signals of a plurality of time signals and a database, wherein each of the plurality of time signals represents a song in the database.

With respect to Claim 29 of the present invention, Yourlo fails to disclose a method for identifying music having the steps of recording a sample of audio data, generating a first plurality of time signals from the sample of audio data, wherein the first plurality of time signals are generated in distinct frequency bands, generating a second plurality of time signals from songs in a database, wherein the second plurality of time signals are generated in the same distinct frequency bands as the first plurality of time signals, and matching the first plurality of time signals with the second plurality of time signals.

As Yourlo fails to disclose each and every element contained in Claims 1, 13, 23, 26, and 29, Yourlo cannot anticipate these claims. Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claims 1, 13, 23, 26, and 29 as being anticipated by the disclosure contained in Yourlo. At least by virtue of their dependencies to allowable Claims 1, Claims 2-12, 14-22, 24, 25, 27, and 28 are also allowable over the disclosure contained in Yourlo.

Other Cited References

The Official Action states that the disclosures contained in U.S. Patent No. 5,925,843 to Miller et al. and U.S. Patent No. 6,539,395 to Gjerdingen et al. are pertinent to Applicant's disclosure. It is respectfully submitted that these disclosures do not contain sufficiently similar subject matter to render the present invention as set forth in the claims unpatentable. For instance, Miller et al. pertains to the identification and synchronization of songs between music stored in a computer memory and a user CD. In addition, Gjerdingen et al. pertains to a method for creating and database for comparing music and therefore does not include the elements as set forth in the claims of the present invention.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please

**PATENT**

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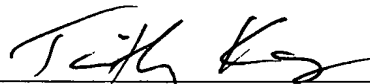
grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

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